

1 David E. Bower (SBN 119546)  
2 FARUQI & FARUQI, LLP  
3 10866 Wilshire Boulevard, Suite 1470  
4 Los Angeles, CA 90024  
5 Tel: (424) 256-2884  
6 Fax: (424) 256-2885  
7 [dbower@faruqilaw.com](mailto:dbower@faruqilaw.com)

FILED

2012 OCT -9 P 3:51

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

#10  
Pd  
SI

Sm

8 Joseph T. Lukens  
9 Richard D. Schwartz  
10 FARUQI & FARUQI, LLP  
11 101 Greenwood Avenue Suite 600  
12 Jenkintown, PA 19046  
13 Tel: (215) 577-5770  
14 Fax: (215) 577-5771  
15 [jlukens@faruqilaw.com](mailto:jlukens@faruqilaw.com)  
16 [rschwartz@faruqilaw.com](mailto:rschwartz@faruqilaw.com)

APR 2012

E-FILING

11 Attorneys for Plaintiff

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14  
15 BRENT MANESS, individually and on behalf of others similarly situated,  
16 Case No.

CV12-05220

DMR

17 Plaintiff,  
18 v.  
19 EXPEDIA, INC., HOTELS.COM LP;  
20 TRAVELOCITY.COM LP, SABRE  
21 HOLDINGS CORPORATION,  
22 PRICELINE.COM INCORPORATED,  
23 BOOKING.COM B.V., BOOKING.COM  
24 (USA), INC., ORBITZ WORLDWIDE, INC.,  
25 HILTON WORLDWIDE INC., STARWOOD  
HOTELS & RESORTS WORLDWIDE, INC.,  
MARRIOTT INTERNATIONAL, INC.,  
TRUMP INTERNATIONAL HOTELS  
MANAGEMENT, LLC, KIMPTON HOTEL  
& RESTAURANT GROUP, LLC,  
INTERCONTINENTAL HOTELS GROUP  
RESOURCES, INC., and JOHN DOES 1-100,

CLASS ACTION COMPLAINT

1. UNREASONABLE RESTRAINT OF TRADE 15 USC § 1
2. VIOLATION OF CARTWRIGHT ACT CA B&P Code § 16720
3. FALSE ADVERTISING CA B&P Code § 17500
4. VIOLATION OF UNFAIR COMPETITION LAWS CA B&P Code § 17200

JURY TRIAL DEMANDED

26 Defendants.  
27

## TABLE OF CONTENTS

	Page
I. NATURE OF ACTION .....	1
II. PARTIES .....	3
A. Plaintiff.....	3
B. Defendants.....	4
III. AGENTS AND CO-CONSPIRATORS .....	5
IV. JURISDICTION AND VENUE .....	6
V. SUBSTANTIVE ALLEGATIONS.....	6
A. The Online Retailer Defendants Become Indispensable to the Hotel Defendants.....	6
B. The Online Retailer Defendants Use their Dominance to Impose the RPM Scheme and Prevent Discounting.....	8
C. The RPM Scheme Has Purposefully Resulted in “Rate Parity” for Room Reservations through the Online Retailer Defendants - Allowing the Online Retailer Defendants to Always Guarantee the “Best” (Albeit Same) Prices .....	15
D. Investigation by Governmental Authorities .....	21
VI. MONOPOLY/MARKET POWER .....	22
VII. MARKET EFFECTS OF AND ANTITRUST INJURY DUE TO DEFENDANTS' ANTICOMPETITIVE CONDUCT .....	23
VIII. CLASS ALLEGATIONS .....	24
IX. TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS .....	26
X. COUNTS.....	27
COUNT I	
VIOLATION OF 15 U.S.C. § 1 (AGREEMENTS UNREASONABLY RESTRAINING TRADE) .....	27
COUNT II	
VIOLATION OF THE CARTWRIGHT ACT .....	
(CALIFORNIA BUSINESS & PROFESSIONS CODE SECTIONS 16720, <i>ET SEQ.</i> ) (CALIFORNIA CLASS ONLY) .....	28
COUNT III	
FALSE ADVERTISING (VIOLATIONS OF CAL. BUS. & PROF. CODE § 17500 <i>ET SEQ.</i> ) .....	28
COUNT IV	
UNFAIR COMPETITION (VIOLATIONS OF CAL. BUS. & PROF. CODE § 17200 ET. SEQ.) .....	30
RELIEF REQUESTED .....	31

1 Plaintiff Brent Maness (“Plaintiff”), by and through his attorneys, on behalf of himself and  
2 all others similarly situated, brings this Class Action Complaint against Expedia, Inc.  
3 (“Expedia”), Hotels.com LP (“Hotels.com”), Travelocity.com LP (“Travelocity”), Sabre  
4 Holdings Corporation (“Sabre Holdings”), Booking.com B.V., Booking.com (USA), Inc.  
5 (Booking.com B.V. and Booking.com (USA), Inc. will be referred to as “Booking.com”),  
6 Priceline.com, Inc. (“Priceline”), and Orbitz Worldwide, Inc. (“Orbitz”) (collectively, “the Online  
7 Retailer Defendants”), and Hilton Worldwide, Inc. (“Hilton”); Marriott International, Inc.  
8 (“Marriott”); Trump International Hotels Management, LLC (“Trump”); InterContinental Hotels  
9 Group Resources Inc. (“InterContinental”), Starwood Hotels & Resorts Worldwide, Inc.  
10 (“Starwood”), and Kimpton Hotel & Restaurant Group, LLC (“Kimpton”) (collectively, “Hotel  
11 Defendants”) and allege, based upon personal knowledge as to himself and his own acts, and as to  
12 all other matters upon information and belief, as follows:

13 **I. NATURE OF ACTION**

14 1. Plaintiff purchased hotel room reservations online (“Room Reservations”) directly  
15 from one or more of the Online Retailer Defendants in the United States. Plaintiff brings this  
16 direct purchaser antitrust action to challenge the Online Retailer Defendants’ conspiracy with the  
17 Hotel Defendants to enter into, maintain and/or enforce minimum resale price maintenance  
18 (“RPM”) agreements. Plaintiff seeks damages and equitable relief from Defendants under  
19 Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and under California Business &  
20 Professions Code §§ 16720, *et seq.*

21 2. The Online Retailer Defendants are among the dominant online travel companies  
22 that act as retailers for Room Reservations in California and the United States. Here, the Online  
23 Retailer Defendants conspired with the Hotel Defendants and agreed to impose an RPM scheme  
24 that would fix the retail price for Room Reservations at the price the Hotel Defendants were  
25 selling the Room Reservation (“Rack Rates”) and restrain competition for Room Reservations  
26 (“Defendant Retailer-Hotel Agreements”) in the market for online reservations. The Defendant  
27 Retailer-Hotel Agreements included express terms to set, maintain, and enforce minimum prices  
28

1 at the Rack Rates.<sup>1</sup> The Defendant Retailer-Hotel Agreements restrained price competition by  
2 requiring the Hotel Defendants to impose, amend, enforce, and/or heighten enforcement of  
3 minimum resale price maintenance agreements with respect to price-cutting Online Retailers,  
4 and/or to prevent price-cutting Online Retailers from discounting Room Reservations or engaging  
5 in the profit-lowering effects of retail price competition for Room Reservations.

6       3. Pursuant to the Defendant Retailers-Hotel Agreements, the Hotel Defendants were  
7 charged with enforcing the RPM scheme against Online Retailers that competed or attempted to  
8 compete with the Online Retailer Defendants on price. Thus the Defendant Retailers-Hotel  
9 Agreements were part of an anti-competitive scheme under which the Online Retailer Defendants  
10 leveraged their substantial market power and dominance to induce the Hotel Defendants into  
11 agreeing to do one or more of the following: (a) impose minimum resale price maintenance  
12 agreements on the Retailers (“Hotel-Online Retailer Agreements”);<sup>2</sup> (b) enforce the Hotel-Online  
13 Retailer Agreements as to the Online Retailers; and/ or (c) refuse to supply or cut off supply to  
14 price-cutting competing Online Retailers.

15       4. As a result of the concerted RPM scheme by the Online Retailer Defendants, each  
16 Defendant Retailer-Hotel Agreement with the major hotel chains including the Hotel Defendants  
17 provides that Room Reservations will not be sold to Plaintiff and members of the Class for less  
18 than the Rack Rate. Because all of the Online Retailer Defendants have the same clause in most  
19 or all of their contracts, whether oral or written, ***none*** of the Online Retailer Defendants compete  
20 with any of the other Online Retailer Defendants on price, ***and*** the retail rates for Room  
21 Reservations are set at Rack Rates and thus are virtually identical amongst the Online Retailer  
22 Defendants and each Hotel.

23       5. Defendant Sabre, which operates Travelocity.com, has admitted that this RPM  
24 scheme:

25                     ‘is a standard industry practice,’ said Nancy St. Pierre, as  
26 spokeswoman for Sabre Holdings, which operates Travelocity.com.

27       

---

<sup>1</sup> The Agreements are comprised of a combination of contracts and conspiracies, whether  
28 oral or written, express or tacit.

29       <sup>2</sup> Hereinafter, the Defendant Retailer-Hotel Agreements and Hotel-Online Retailer  
30 Agreements may be collectively referred to as the “Agreements.”

1  
2 It's done in part 'so that the customer can have the confidence that  
3 they will get the best rate, that they don't have to go on 18 different  
sites,' she said.<sup>3</sup>

4 6. However, the Online Retailer Defendants' "best price guarantees" are nothing  
5 more than a cover for their conspiracy to fix prices, such that the Online Retailer Defendants do  
6 not have to compete on price but can offer the "best price" to their customers knowing that all of  
7 the Online Retailer Defendants will offer the *same* anti-competitive price. There is in reality no  
8 "best price" but instead there is a fixed uniform price.

9 7. Absent Defendants' anti-competitive and deceptive conduct, Plaintiff and the other  
10 Class members would have paid less for each of the Room Reservations purchased during the  
11 Class Period. The direct consequence of Defendants' unlawful conduct was that Plaintiff and  
12 other Class members paid overcharges on their purchases of Room Reservations throughout the  
13 Class Period. Plaintiff thus seeks damages and equitable relief under Sections 4 and 16 of the  
14 Clayton Act, 15 U.S.C. §§ 15(a) and 26, for violations of Section I of the Sherman Antitrust Act,  
15 15 U.S.C. § 1, and for violation of Cal. Bus. & Prof. Code § 17500 *et seq.* In addition, a subclass  
16 of California residents who purchased Room Reservations brings a claim for violations of  
17 California Business & Professions Code Sections 16720, *et seq.*

## 18 II. PARTIES

### 19 A. Plaintiff

20 8. Plaintiff Brent Maness ("Maness" or "Plaintiff") is a resident and citizen of San  
21 Francisco, California.

22 9. Maness has, during the Class Period, purchased Room Reservations for hotel  
23 rooms through several of the Online Retail Defendents. Mr. Maness has been damaged by the  
24 conduct alleged herein.

### 25 B. Defendants

26 10. Defendant Expedia, Inc. is a Delaware corporation with its principal place of

27 28 <sup>3</sup> Karin Robinson-Jacobs, "Practice that holds rates steady among Hotel Defendants,  
travel sites coming under fire," Dallas Morning News (Nov. 16, 2010), reprinted at  
<http://hsmaidfw.blogspot.com/> (last accessed August 15, 2012).

1 business at 333 108th Avenue NE, Bellevue, Washington 98004.

2       11. Defendant Hotels.com LP is an affiliate of Expedia. Hotels.com LP is a Texas  
3 limited partnership with its headquarters located at 10440 North Central Expressway, Suite 400,  
4 Dallas, Texas 75231.

5       12. Defendant Travelocity.com LP is a Delaware limited partnership with its principal  
6 place of business located at 3150 Sabre Drive, Southlake, Texas 76092. Travelocity is owned by  
7 Defendant Sabre.

8       13. Defendant Booking.com B.V. is a company based in Amsterdam, the Netherlands,  
9 with its principal place of business at Herengracht 597, 1017 CE, Amsterdam, Netherlands.  
10 Booking.com B.V. owns and operates Booking.com, the leading worldwide online Room  
11 Reservations agency by room nights sold, attracting over 30 million unique visitors each month  
12 via the Internet from both leisure and business markets worldwide. Booking.com B.V. is a  
13 wholly owned subsidiary of Priceline.com Incorporated.

14       14. Defendant Booking.com (USA), Inc. is a Delaware corporation with its primary  
15 place of business located at 100 William Street, Suite 750, New York, New York 10038.  
16 Booking.com (USA), Inc. is a wholly owned subsidiary of Priceline.com Incorporated.

17       15. Defendant Priceline.com Incorporated is a Delaware corporation with its primary  
18 place of business located at 800 Connecticut Avenue, Norwalk, Connecticut 06854.

19       16. Defendant Orbitz Worldwide, Inc. is a Delaware corporation and its corporate  
20 headquarters are located at 500 W. Madison Street, Suite 1000, Chicago, Illinois 60661.

21       17. Defendant Sabre Holding Corporation, incorporated in Delaware, is headquartered  
22 at 3150 Sabre Drive, Southlake, Texas 76092.

23       18. Defendant Intercontinental Hotels Group Resources, Inc. is a Delaware  
24 corporation with its primary place of business located at 3 Ravinia Drive, Suite 100, Atlanta,  
25 Georgia 30346-2149.

26       19. Defendant Starwood Hotels & Resorts Worldwide, Inc. is a Maryland corporation  
27 with its principal place of business at One StarPoint, Stamford, Connecticut 06902. Starwood's  
28 hotels are primarily operated under the brand names St. Regis®, The Luxury Collection®,

**1 Sheraton®, Westin®, W®, Le Meridien®, Four Points® by Sheraton, Aloft® and Element®.**

2        20. Defendant Marriott International, Inc. is a Delaware corporation with its principal  
3 place of business at 10400 Fernwood Road, Bethesda, Maryland 20817-1102.

4           21. Defendant Trump International Hotels Management, LLC, doing business as The  
5       Trump Hotel Collection, is a Delaware limited liability company headquartered at 725 Fifth  
6       Avenue, New York, New York 10022.

7           22. Defendant Hilton Worldwide, Inc. is a Delaware company doing business as  
8 Hilton Hotels & Resorts with its primary place of business located at 7930 Jones Branch Drive,  
9 McLean, Virginia 22102.

10        23. Defendant Kimpton Hotel & Restaurant Group, LLC is a Delaware limited  
11 liability company with its principal place of business located at 222 Kearny Street, Suite 200, San  
12 Francisco, CA 94108.

### III. AGENTS AND CO-CONSPIRATORS

14       24. Various other persons, firms and corporations, not named herein as Defendants,  
15 have participated as co-conspirators with the Defendants and have performed acts and made  
16 statements in furtherance of the conspiracy. Some of these firms are as yet unidentified. The acts  
17 alleged against the Defendants in this Complaint were authorized, ordered, or done by their  
18 officers, agents, employees, or representatives, while actively engaged in the management and  
19 operation of Defendants' businesses or affairs.

20        25. Each Defendant acted as the principal, agent, or joint venturer of, or for, other  
21 Defendants with respect to the acts, violations, and common course of conduct alleged by  
22 Plaintiff.

23        26. Whenever this complaint refers to an act, deed or transaction of a corporation or  
24 entity, the complaint is alleging that the corporation or entity engaged in the act, deed or  
25 transaction by or through its officers, directors, agents, employees or representatives while they  
26 were actively engaged in the management, direction, control or transaction of the corporation or  
27 entity's business or affairs.

#### **IV. JURISDICTION AND VENUE**

27. Plaintiff brings this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, to recover treble damages, equitable relief, costs of suit and reasonable attorneys' fees for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject matter jurisdiction is proper pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a), and 28 U.S.C. §§ 1331 and 1337, because the action arises under the laws of the United States.

28. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b) and (c), in that at least one of the Defendants resides in this judicial district, is licensed to do business or is doing business in this judicial district.

29. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of this Court is proper pursuant to Northern District of California Local Rule 3-2(d) because a substantial part of the events giving rise to the claims arose in this District.

## V. SUBSTANTIVE ALLEGATIONS

#### **A. The Online Retailer Defendants Become Indispensable to the Hotel Defendants**

30. As recently as 1997, the concept of an "internet travel company" or Online Retailer - an entity organized to effectuate travel plans, reservations and purchases via the worldwide web - was virtually unknown. In recent years, the internet travel industry has seen explosive growth. By some estimates, more than half of all hotel bookings in the United States are made online, many through internet travel companies owned by the Online Retailer Defendants.

31. Through their web portals, the Online Retailer Defendants allow consumers to rent hotel rooms in many different hotels throughout the country and the world. These companies offer their services to Hotel Defendants and consumers through several different business models, including the “Agency Model,” the “Merchant Model,”<sup>4</sup> and/or the “Wholesale Model.”

<sup>4</sup> The Agency Model and the Merchant Model are described in the 2002 annual report of Defendant Expedia, Inc. as filed with the Securities and Exchange Commission on Form 10-K on March 31, 2003, and the 2004 Annual Report on Form 10-K as filed with the SEC of IAC/Interactive Corp. (the parent company - at that time - of Expedia.com, Hotwire.com and Hotels.com), p.9.

1       32. Under the Agency Model, Online Retailers charge a “service fee” to hotel  
2 operators on a transaction basis for booking customers into rooms at a given hotel and the  
3 consumer pays the hotel for the room directly. Under the Agency Model, the hotels should be  
4 setting - and the Online Retailers should be requiring - a competitive price for Room Reservations  
5 to increase business and compete against other Online Retailers offering the same service.

6       33. Under the Merchant Model, the Online Retailers do not function merely as service  
7 providers collecting a fixed transaction fee from the hotels. Rather, the Merchant Model consists  
8 of two independent but related transactions whereby an internet travel company: (i) obtains  
9 access to an inventory of hotel rooms at rates negotiated with the Hotel Defendants (“wholesale”  
10 rates); and (ii) then sells the rooms to consumers at higher rates (“retail” rates), keeping the  
11 difference as profit. Under this Merchant Model, the Online Retailers should be competing on  
12 price by increasing or decreasing the margin added to the wholesale rates to set the retail rate.

13       34. The third model is the “Wholesale Model,” whereby smaller price-cutting Online  
14 Retailers obtain-access to rooms through wholesalers. Wholesalers, or intermediaries between  
15 the Online Retailers and the hotels, work directly with Hotel Defendants to obtain last minute  
16 blocks of rooms that need to be filled. The wholesalers then make those rooms available to  
17 smaller Online Retailers at a wholesale rate. The Online Retailers then, like in the Merchant  
18 Model, sell the rooms to consumers at higher retail, keeping the difference as profit. Under this  
19 Wholesale Model, the Online Retailers should also be competing on price by increasing or  
20 decreasing the margin added to the wholesale rates to set the retail rate.

21       35. Through the Agency Model and Merchant Model, the Online Retailer Defendants  
22 gained a dominant presence in the online sale of Room Reservations. The Online Retailer  
23 Defendants now hold more than a 50 percent market share in the internet travel business market.  
24 Just Expedia and its subsidiaries alone account for approximately 50% of the internet travel  
25 business market. Moreover, currently, the Online Retailer Defendants have become increasingly  
26 important to the Hotel Defendants’ business – generating as much as 50% of the Hotel  
27 Defendants’ Room Reservation traffic. Thus, the Hotel Defendants believe that they need access  
28 to the Online Retailer Defendants’ distribution network.

1           **B. The Online Retailer Defendants Use their Dominance to Impose the RPM Scheme  
2           and Prevent Discounting**

3           36. As a result of their dominance, and knowing that the Hotel Defendants cannot  
4 afford to lose access to their distribution network, the Online Retailer Defendants devised an  
5 illegal RPM scheme to combat new or more efficient internet retailers, including those that  
6 obtained access to hotel rooms through the Wholesale Model, by exacting agreements from the  
7 Hotel Defendants that desired to sell Room Reservations through the Online Retailer Defendants  
8 to require, on penalty of termination and as a condition of doing business with the Online Retailer  
9 Defendants, that the Hotel Defendants ensure that competing online retailers refrain from  
10 discounting from the Rack Rate.

11           37. The Defendant Retailer-Hotel Agreements are and were part of an overall  
12 agreement to impose and enforce the RPM scheme. For example, in 2004, multiple hotels,  
13 including Defendants Hilton and Kimpton, and Online Retailers, including Defendant Priceline,  
14 met together in Las Vegas for EyeforTravel's second annual Revenue Management and Pricing in  
15 Travel conferences.<sup>5</sup> At the conference, Defendants Hilton, Kimpton and Priceline discussed  
16 "rate parity" and "pricing strategies." In fact, Jimmy Shu, VP Revenue Management and  
17 Distribution at Kimpton led a presentation to "address the issues associated with adapting rate  
18 parity across all distribution channels. . ." EyeforTravel has annually sponsored these  
19 conferences, and the attendees have expanded to include nearly all of the Defendants.<sup>6</sup>

20           38. As part of the Defendant Retailer-Hotel Agreements, the Hotel Defendants  
21 demonstrated their compliance by requiring that competing online retailers agree to raise and  
22 maintain retail prices at the Rack Rate. As a further sign of their agreement with the Online  
23 Retailer Defendants, in some instances, the Hotel Defendants threatened Online Retailers with  
24 legal action and/or refused to allow Online Retailers, such as Skoosh.com, to sell Room  
25 Reservations if the Online Retailers refused to price fix and maintain resale prices at the Rack

---

26           <sup>5</sup> [http://www.hotel-online.com/News/PR2004\\_2nd/May04\\_EyeForTravel.html](http://www.hotel-online.com/News/PR2004_2nd/May04_EyeForTravel.html) (last  
27 accessed August 17, 2012).

28           <sup>6</sup> <http://events.eyefortravel.com/travel-distribution-summit-north-america/past-attendees.php> (last accessed August 17, 2012).

1 Rate in compliance with the RPM scheme. Further pursuant to their agreement with the Online  
 2 Retailer Defendants, in some instances, the Hotel Defendants required the wholesalers to stop  
 3 providing rooms to price-cutting Online Retailers, such as Skoosh.com, if they refused to price fix  
 4 and maintain resale prices at the Rack Rate.

5       39.     For example, Skoosh has publicly complained that it tried to sell discounted Room  
 6 Reservations on its online travel site but was thwarted by the resale price maintenance scheme:

7       ‘We were openly discounting and hotels would email, call and threaten  
 8 legal action,’ Skoosh told the BBC.

9       ‘Either we’d have to raise prices or take the hotels off our list,’ said  
 10 Dorian Harris from Skoosh.<sup>7</sup>

11      40.     In fact, Skoosh has claimed that the Agreements have “created a Mafia-style  
 12 atmosphere and an intolerable climate for new businesses. Skoosh has been directly threatened  
 13 and, in turn, has defended its right to discount hotel prices.”<sup>8</sup>

14      41.     Skoosh published a letter dated August 31, 2010, from its CEO to Online Retailer  
 15 Defendant and Skoosh’s competitor Booking.com, complaining about Booking.com’s  
 enforcement of the Defendant Retailer-Hotel Agreements. The letter states, in part:

16       Both personally, and even as a direct competitor, I was always a fan  
 17 of Booking.com. Yours was one of the better hotel booking sites I  
 18 always thought, with some innovative features. However, my rosy  
 19 picture fast disappeared last winter when Skoosh started being  
 20 pursued by your business partners insisting that we raise our hotel  
 21 prices to the same as yours. I’m hoping you can find the time to  
 22 address some of the points below and restore my faith in your  
 23 company.

24       Some background then. Earlier this year we started getting some  
 25 calls from angry and confused hoteliers insisting that we were  
 26 selling their rooms too cheaply. I called them back to work out what  
 27 was going on and they mostly told me that Booking.com had been  
 28 on to them threatening all sorts of nonsense if they didn’t either  
 remove their hotel from Skoosh or force Skoosh to raise its prices.

I wondered how this was all happening so quickly and then I did a  
little research and found that Booking.com has an active policy of  
maintaining the same prices for all companies across the internet. I  
even found a job ad of yours looking for ‘Rate Parity Associates’. It

---

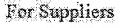
<sup>7</sup> <http://www.bbc.co.uk/news/business-11330463> (last accessed August 5, 2012).

<sup>8</sup> <http://www.tnooz.com/2012/07/31/news/regulator-accuses-expedia-booking-com-and-intercontinental-in-hotel-competition-infringement-probe/> (last accessed August 5, 2012).

1 seems like you've got a whole team out there beavering away to  
2 'find any rate inconsistencies between Booking.com and their  
3 competitors.' They're doing a good job I have to say. The hoteliers  
4 you work with are certainly concerned. One wrote to ask me to  
close out their hotel on Skoosh: 'just to avoid the penalty that  
[Booking.com] is threatening us about'.

5 Some were less friendly. Many of the hoteliers wrote letters to me  
6 threatening legal action. One of them had a colleague of yours on  
7 one line and me on the other. It seemed that your colleague was  
insisting that if we hadn't removed their hotel from Skoosh by the  
end of the phone call Booking.com would cancel the contract with  
them. They were very scared.<sup>9</sup>

8 42. The Rate Assured Hotel Program implemented by Defendant Sabre (which owns  
9 Defendant Travelocity) requires the Hotel Defendants to enforce the RPM scheme:<sup>10</sup>

10  For Suppliers

11 **Sabre Rate Assured™ Hotel Program**

12 Are you *Rate Assured*?

13 *Sabre Travel Network* has already begun measuring properties to validate rate parity  
across properties prior to the official launch. So make sure your properties are rate  
14 compliant!

- 15 (b) If it is determined that a property is not providing rate parity in the program, it  
will essentially be placed on "Probation" status.  
16 (c) If a property is not providing rate parity in the subsequent measurement, *Sabre*  
will consider the hotel "In Violation".

17 43. In fact, Sabre also runs a division called "Sabre Hospitality Solutions," which  
18 expressly markets and encourages hotels to adopt rate parity – in effect, the RPM scheme. See,  
19 e.g., <http://www.sabrehospitality.com/blog/2011-10-27/how-hotels-can-leverage-ota-relationships-without-killing-their-pricing-strategy>; <http://www.sabrehospitality.com/blog/2011-11-30/three-top-trends-in-hospitality-marketing-anddistribution-to-consider-when-planning-for-2012>.

20 44. Thus, pursuant to the Defendant Retailer-Hotel Agreements, the Hotel Defendants  
21 are enforcing the RPM scheme on price-cutting competing online retailers. For example:

22  
23 \_\_\_\_\_  
24 26 <sup>9</sup> <http://dorian.skoosh.com/open-letter-to-kees-koolen-ceo-at-booking-com/> (last accessed  
August 5, 2012).

25  
26 27 <sup>10</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed  
August 16, 2012).

1                   a.     Defendant Hilton required Skoosh's wholesale supplier in the United  
2 States, AlliedTPro, to entirely cut off its contract with Skoosh as a result of Skoosh's discounting  
3 and Defendant Hilton's enforcement of the Defendant Retailer-Hotel Agreements. AlliedTPro  
4 wrote to Skoosh: "Trust me I would welcome the additional business but cannot risk our contracts  
5 with Hilton."<sup>11</sup>

6                   b.     Defendant Trump expressly admitted it was enforcing the Defendant  
7 Retailer-Hotel Agreements, emailing Skoosh:<sup>12</sup>

8                   **From:** [REDACTED]  
9                   **Sent:** 10 May 2010 18:27  
10                  **To:** Dorian Harris  
11                  **Subject:** RE: New inquiry was submitted on Skoosh.com

12                  The simple answer is; if we do not maintain parity with all, we are threatened with poor placement on  
13 sites and worst case... removal of hotel from sales sites. That is the way the OTA's operate in USA.  
14 Expedia threatens if Travelocity gets lower rate and vice-versa. It is a vicious cycle if we get out of  
15 parity.  
16 I think the model in Europe is built to operate more competitively but that is not the model here.  
17 (Much as I wish it was the same as Europe!) I hope this helps you understand why we must be strict  
18 with what is offered on all websites.  
19 Thanks,

20 [REDACTED]  
21                  Trump International [REDACTED]

22                  c.     Defendant Intercontinental wrote to Skoosh "demanding that Skoosh either  
23 raise[] its rates to the same as the hotels and its other distribution partners (a practice known in  
24 the industry as 'rate parity' \*\*\* ) or remove the hotels entirely from our site."<sup>13</sup>

25                  d.     In 2003, Defendant Marriott announced "a sweeping overhaul of its  
26 transient pricing, bringing parity to all Marriott distribution channels – offline and online."<sup>14</sup>  
27 During the Class Period, Marriott was among the Hotel Defendants threatening Skoosh.com with  
28 legal action and/or the withdrawal of their Room Reservations if Skoosh.com did not maintain  
rate parity.

29                  <sup>11</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed  
30 August 15, 2012).

31                  <sup>12</sup> <http://dorian.skoosh.com/open-letter-to-f-t-c-chairman-jon-leibowitz/> (last accessed  
32 August 16, 2012).

33                  <sup>13</sup> <http://dorian.skoosh.com/open-letter-to-william-baer-arnold-porter-llp/> (referring to  
34 Holiday Inn New York) (last accessed August 16, 2012).

35                  <sup>14</sup> <http://www.businesstravelnews.com/More-News/Marriott-Revamps-Pricing--Offers-Complete-Parity,-Curtails-Fixed-Consortia-Rates/?a=btn> (last accessed August 17, 2012).

1                   e.     Defendant Starwood enforces the RPM scheme. “In one email to a hotel  
 2 discounter, an executive at Starwood, which runs Le Meridien, Westin, W and Sheraton hotels,  
 3 said: ‘Should a wholesaler decide to sell the rooms on a room only basis, he has to make sure that  
 4 the per contract agreed minimum mark-up is guaranteed.’ The employee said the ‘violation’ of  
 5 Starwood’s Best Rate Guarantee was ‘really serious’ and the breach was reported to the Brussels  
 6 headquarters.”<sup>15</sup>

7         45.   Similarly, Kayak.com, which is a price comparison website, told Skoosh on  
 8 several occasions that it had to “play the Orbitz game,”<sup>16</sup> *i.e.* maintain rate parity, or Kayak would  
 9 no longer publish Skoosh’s prices. Kayak apparently felt pressured to enforce rate parity on  
 10 behalf of the Online Retailer Defendants because, for example, Orbitz accounted for 18.8% of  
 11 Kayak’s total revenues and Expedia and its affiliates accounted for 24.9% of Kayak’s total  
 12 revenues for the nine months ended September 30, 2010.<sup>17</sup> After Skoosh reported the RPM  
 13 scheme to governmental authorities, Kayak stopped publishing Skoosh’s prices on its price  
 14 comparison site.

15         46.   Each of these actions was taken directly because of the pressure the Online  
 16 Retailer Defendants were placing on Hotel Defendants to protect the Online Retailer Defendants’  
 17 margins by enforcing the RPM scheme. The Hotel Defendants enforced the RPM scheme  
 18 because they feared losing access to the Online Retailer Defendants’ website to sell their rooms if  
 19 they did not. As one industry consultant explained:

20                   ‘I don’t know that there’s been enough public questioning of this [rate  
 21 parity] practice,’ said Ashwin Kamlani, founder of Hotel Internet Help Inc., which  
 22 helps independent hotels get more sales via cyberspace.

23                   ‘The hotels enforce rate parity because they fear the consequences of not  
 24 maintaining rate parity,’ he said. ‘They fear having their hotel dropped to page 6 or  
 25 even pulled off their largest producing [online travel agents] sites, which translates

---

26                   <sup>15</sup> <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/8467755/Hotels-face-inquiry-in-price-fixing-scandal.html> (last accessed August 17, 2012).

27                   <sup>16</sup> <http://dorian.skoosh.com/open-letter-to-steve-hafner-c-e-o-kayak-com/> (last accessed August 17, 2012).

28                   <sup>17</sup> <http://www.businessinsider.com/kayak-ipo-2010-11> (last accessed August 17, 2012).

1                   into a potentially significant loss of revenue.<sup>18</sup>

2         47. Blink Booking, a mobile-only hotel booking service, echoed the claims of  
3 competing online retailers, saying: “We’ve long believed that the big online travel agents have  
4 been guilty of denying consumers the best prices – and that hotels’ hands are tied by price parity  
5 agreements. The online travel market may appear to offer plenty of choice and competition, but  
6 the reality is that there are lots of different shop windows selling the same rooms at the same  
7 prices - with those prices agreed through parity deals between the big groups and the big OTAs  
8 [online travel agents].”<sup>19</sup>

9         48. The Hotel Defendants knew that the Online Retailer Defendants would enforce the  
10 Agreements or refuse to sell the Hotel Defendants’ rooms. For example, in 2009, Defendant  
11 Expedia refused to list or sell Room Reservations from Choice Hotels. Expedia’s CEO and  
12 President Dara Khosrowshahi explained:

13                   ‘. . . As far as the discussions that we’ve had with Choice, we are  
14 not doing business with Choice right now on a chain basis. We don’t  
have a vast majority of Choice hotels on our side,’ said Khosrowshahi . . .

15                   . . . he added, ‘First of all, our primary goal is to have the  
16 broadest, deepest set and highest quality set of inventory for the benefit  
17 of our customers. And this doesn’t signal any kind of change in our  
18 overall philosophy as far as how we work with our hotel partners and  
what we’re looking at. It’s not really an issue of economics; it’s more  
than issue of our wanting rate parity and inventory parity for our  
customers.’

19                   ‘When our customers come to Expedia, we want them to know  
20 that they’re getting the best prices and certainly, we are insistent on that.  
And to the extent that Choice doesn’t want to work under those terms.  
21 We won’t be doing business with each other. Those are the terms that  
we work with our others strategic partners, they’re comfortable where  
they were comfortable with it. So, its nothing usual from what I would  
say is typical practice for us in most of our other OTA competitors so to  
22 speak.’<sup>20</sup>

24                   

---

25         <sup>18</sup> Karin Robinson-Jacobs, “Practice that holds rates steady among Hotel Defendants,  
travel sites coming under fire,” Dallas Morning News (Nov. 16, 2010), reprinted at  
<http://hsmaidfw.blogspot.com/> (last accessed August 15, 2012).

26         <sup>19</sup> <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/9441235/OFT-alleges-Intercontinental-Hotels-online-deals-broke-competition-law.html> (last accessed August 16, 2012).

27         <sup>20</sup> <http://www.eyefortravel.com/distribution-strategies/expedia-stresses-rate-parity-and-inventory-parity-its-customers> (last accessed August 17, 2012).

1       49. Thus, the Online Retailer Defendants sought and received agreements from the  
2 Hotel Defendants that they would only sell to Online Retailers who would not discount the Rack  
3 Rate for Room Reservations, even if and when it reduced the Hotel Defendants' sales and/or  
4 profits by slowing sales of the Room Reservations.

5       50. More specifically, the Hotel Defendants agreed to work with the Online Retailer  
6 Defendants to implement and enforce the RPM scheme to ensure that pricing by competing  
7 Online Retailers be restrained.

8        51. The Online Retailer Defendants sought and obtained the agreement of the Hotel  
9 Defendants to impose and enforce “rate parity” – i.e., restraint on price competition – solely for  
10 the Online Retailer Defendants’ benefit and not for any legitimate pro-competitive reason.

11        52. The Online Retailer Defendants are driven to maintain their product and profit  
12 margins, as their margins are threatened by newer, more efficient internet retailers. That  
13 dominant retailers, like the Online Retailer Defendants, would react anti-competitively to threats  
14 to their pricing freedom, such as those posed by new or more efficient retailers, has been  
15 acknowledged by the United States Supreme Court.

16        53. The Supreme Court not only recognized that minimum resale pricing may be  
17 imposed by a dominant retailer for that retailer's benefit, but stated that such behavior violates the  
18 antitrust laws. Indeed, the Supreme Court cautioned that:

[r]esale price maintenance, furthermore, can be abused by a powerful manufacturer or retailer. A dominant retailer, for example, might request resale price maintenance to forestall innovation in distribution that decreases costs. A manufacturer might consider it has little choice but to accommodate the retailer's demands for vertical price restraints if the manufacturer believes it needs access to the retailer's distribution network. See Overstreet 31; 8 P. Areeda & H. Hovenkamp, Antitrust Law 47 (2d ed. 2004) (hereinafter Areeda & Hovenkamp); cf. *Toys "R" Us, Inc. v. FTC*, 221 F.3d 928, 937-938 (CA7 2000).

\*\*\*

As should be evident, the potential anticompetitive consequences of vertical price restraints must not be ignored or underestimated.

<sup>26</sup> Leegin Creative Leather Prods., Inc. v. PKS: Inc., 127 S. Ct. 2705, at 2719-20 (2007).

1           **C. The RPM Scheme Has Purposefully Resulted in “Rate Parity” for Room  
2           Reservations through the Online Retailer Defendants - Allowing the Online Retailer  
3           Defendants to Always Guarantee the “Best” (Albeit Same) Prices**

4           54. The RPM Scheme has achieved its illegal goal: Online Retailer Defendants do not  
5           compete on the basis of price for Room Reservations. Rather, all online sales of Room  
6           Reservations for the same rooms are at the Rack Rate.

7           55. Deposition testimony of Tim Gordon, Senior Vice President, of Priceline makes  
8           clear that each of the Online Retailer Defendants buys the rooms and sells the rooms to the public  
at exactly the same price:

9           Q. And in fact, sir, lets take a look at ALL22. And this is a printout I did back in  
10           September for a night's stay at the Hilton in San Antonio. . . . \$219 rate, taxes and  
11           then a total. And then if you will look through, I've printed out from the various  
12           websites of the defendants, same hotel, same night. Orbitz has its \$219.00 rate.  
13           Cheap Tickets has its \$219.00 rate. Lowest Fare has a \$219.00 rate. Priceline,  
14           \$219.00 rate. Travel Now, \$219.00. Expedia, \$219.00. And Hotels.com,  
15           \$219.00. Every website lists this room on this night at the exact same room rate.  
16           And you know – you know, based upon the way the contracts work, that doesn't  
17           surprise you, does it?

18           A. No.

19           Q. And why doesn't that surprise you?

20           A. Because in general - and I can't be too specific because I don't know the exact  
21           terms of this agreement, but in general the contracts require us to take a net rate  
22           that they provide and mark it up by a specific amount. And they require us to  
mark it up by that amount.

23           Q. By that exact amount?

24           A. Yes.

25           Q. And your understanding is that you have best price guarantee from Hilton where  
26           they can offer your competitors more heavy discounts than they can offer  
Priceline, correct?

27           A. That is true.

28           \*\*\*

Q. All right. And so given the Most Favored Nations Clause that  
Hilton has, your understanding would be everybody – all these  
competitors are being provided this room at the same price and  
marking it up by the same amount resulting in the same retail rate,  
correct?

A. I believe that to be true.

1       56. In fact, a federal court in the Western District of Texas recently commented on the  
 2 similarity of the business models and pricing structures of the Online Retailer Defendants:

3              After reviewing the record, it is clear that the Defendants not only  
 4 engage in a common course of conduct, but that many of their  
 5 business practices are virtually identical. These practices include but  
 6 are not limited to the manner in which they contract with the Hotel  
 7 Defendants, the manner in which they determine and assess  
 8 cancellation policies and fees, the manner in which they determine  
 9 the mark up and fees to arrive at an acceptable margin and retail/sell  
 10 rate; and, the manner in which they calculate, assess and pay hotel  
 11 occupancy taxes. The deposition testimony of the corporate  
 12 representatives, standing alone, reflects an amazing similarity in  
 13 practice, procedure and corporate methodology among all of the  
 14 [Online Retailer Defendants]. Memorandum and Opinion on Class  
 15 Certification, City of San Antonio v. Hotels. com, et al., No. SA-06-  
 16 CA-381-OG (W.D. Tex) (the "San Antonio Class Cert Order") at 18-  
 17 19 (emphasis added).

18       57. The Court determined, based upon deposition testimony, that the margins of each  
 19 of the Online Retailer Defendants were identical to the other Online Retailer Defendants:

20              Almost without exception, the net rate and sell rate for a given room  
 21 on a given day are the same among the [Online Retailer Defendants]  
 22 because the Defendants' agreements with the Hotel Defendants all  
 23 contain "parity" or "Most Favored Nation" clauses. This also makes  
 24 the [ITC] margins the *same*. *Id. at 20, n21* (citations to deposition  
 25 testimony omitted).

26       58. This rate parity is demonstrated by examples of hotel rooms available for  
 27 reservation on the Online Retailer Defendants' internet sites:

28              Holiday Inn San Diego on the Bay (9/29-9/30) posted 8/7/2012:

Expedia Standard	\$186
Orbitz Standard	\$186
Priceline.com Standard	\$186
Travelocity .com Standard	\$186
Booking .com Standard	\$186
Holiday Inn website Standard	\$186
Expedia Deluxe	\$235
Hotels.com Deluxe	\$235
Orbitz Deluxe	\$235
Priceline.com Deluxe	\$235
Travelocity.com Deluxe	\$235
Booking.com Deluxe	\$235

1	Holiday Inn website Deluxe	\$235
---	----------------------------	-------

2 InterContinental Century City (9/29-9/30) posted 8/7/2012:

3	Expedia Executive Suite	\$375
4	Hotels.com Executive Suite	\$375
5	Orbitz Executive Suite	\$375
6	Priceline.com Executive Suite	\$375
7	Travelocity .com Executive	\$375
8	Booking.com Executive Suite	\$375
	Hotel website Executive Suite	\$375

9 InterContinental San Francisco (9/29-9/30) posted 8/7/2012:

10	Expedia Deluxe	\$333
11	Hotels.com Deluxe	\$333
12	Orbitz Deluxe	\$333
13	Priceline.com Deluxe	\$333
14	Travelocity.com Deluxe	\$333
	Booking.com Deluxe	\$333
	Hotel website Deluxe	\$333

15 San Diego Marriott (9/22-9/23) posted 8/7/2012:

16	Expedia Bayview	\$240
17	Hotels.com Bayview	\$240
18	Orbitz Bayview	\$240
19	Priceline.com Bayview	\$240
20	Travelocity.com	\$240
21	Booking.com Bayview	\$240
22	Hotel website	\$240

23 LA Marriott Airport (9/29-9/30) posted 8/7/2012:

24	Expedia Deluxe	\$119
25	Hotels.com Deluxe	\$119
26	Orbitz	\$119
27	Priceline.com	\$119
28	Travelocity .com	No listing
	Booking.com Deluxe	\$119

1	Hotel website	\$119
---	---------------	-------

2 Marriott Marquis San Francisco (9/29-9/30) posted 8/7/2012:

3	Expedia Deluxe	\$389
4	Hotels.com Deluxe	\$389
5	Orbitz Deluxe	\$389
6	Priceline.com Deluxe	\$389.
7	Travelocity.com Deluxe	\$389
8	Booking.com Deluxe	\$389
9	Hotel website	\$389
10	Expedia City View	\$414
11	Hotels.com City View	\$414
12	Orbitz City View	\$414
13	Priceline.com City View	\$414
14	Travelocity.com City View	\$414
15	Bookie .com City View	\$414
16	Hotel website	\$414

13 Hilton San Diego (9/22-9/23) posted 8/7/2012:

14	Expedia Bay/City View	\$185
15	Hotels.com Bay/City View	\$185
16	Orbitz Bay/City View	\$189 (refundable)
17	Priceline.com Bay/City View	\$185
18	Travelocity.com Bay/City View	\$185
19	Booking.com Bay/City View	\$185
	Hotel website	\$185

20 Hilton San Francisco (9/29-9/30) posted 8/7/2012:

21	Expedia King	\$459
22	Hotels.com King	\$459
23	Orbitz King	\$459
24	Priceline.com King	\$459
25	Travelocity.com Standard King	\$459
26	Booking.com Standard King	\$459
	Hotel website	\$459

27 59. That the rate parity results from the RPM scheme is clear. The Online Retailer  
 28

1 Defendants employ “market managers” who “monitor closely a hotel’s rates across all channels,  
 2 and if a preferential rate was given to one over the other that hotel could face dire penalties.”<sup>21</sup> In  
 3 fact, as Hotel Defendants started experimenting with price discounting by offering “tiered  
 4 pricing,” the Online Retailer Defendants started to demand Hotel Defendants stop competing with  
 5 online retailers on price.

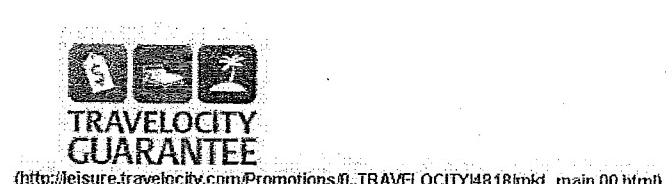
6       60. An industry expert recounts that Hotel Defendants seeking to promote price  
 7 discounts in order to have consumers buy directly from the hotel were met with the Online  
 8 Retailer Defendants demanding price competition cease. According to the industry source,  
 9 “Hilton, for example, is promoting like crazy to get the customer to book direct. ‘Book with us  
 10 and get 500 extra points or free Internet.’” But this competition was unacceptable to the Online  
 11 Retailer Defendants and contrary to the RPM scheme. “That’s where the [Online Retailer  
 12 Defendants] were forced to become big proponents of rate parity.” So the Online Retailer  
 13 Defendants ensured that the Hotel Defendants could not “undercut,” *i.e., price compete*, by  
 14 entering into Defendant Retailer-Hotel Agreements and the RPM scheme.

15       61. As a result of the “success” of the RPM scheme, the Online Retailer Defendants  
 16 are confident that all of the prices listed among them for the same room will be identical. Thus,  
 17 they each offer a near identical “best price” guarantee – knowing it is the *only* price available  
 18 even among competitors. Examples follow:

19

20       a. **Travelocity's Guaranteed Low Prices**

21



22

**Why Book With Us?**

23

Low Prices, Guaranteed

24

[http://leisure.travelocity.com/Promotions/0\\_TRAVELOCITY14818/mkt\\_main.00.html](http://leisure.travelocity.com/Promotions/0_TRAVELOCITY14818/mkt_main.00.html)

25

Guaranteed Best Price: If you find a lower rate, we'll pay the difference and send you \$50.

26

<sup>21</sup> HotelNewsNow.com, June 25, 2012, Does rate parity limit revenue managers?

1                   **b. Expedia's Best Price Guarantee**



2  
3  
4  
5  
6  
7  
8                   We're so confident you'll find the best price for your trip here on Expedia that we guarantee it. Find a cheaper trip  
9                   within 24 hours of booking and we'll refund the difference and give you a travel coupon worth \$50.  
10

11                   **c. Booking.com Best Price Guarantee**

12                   **Best Price Guaranteed**

13                   We promise that when you book with us, you'll get the lowest possible price for your room.  
14                   Guaranteed.

15  
16                   **d. Hotels.com Price Match Guarantee**

17                   **Price Match**

18  
19                   The hotels.com Price Match Guarantee protects your pocket book and takes the worry out of booking a hotel  
20                   room. After you book with hotels.com, if you find a lower publicly available rate online for the same dates, hotel,  
21                   and room category, we will match the price and refund you the difference.

22                   **e. Orbitz Low Price Guarantee**



23  
24                   **Orbitz Low Price Guarantee**

25                   Look for our hotel and car rates backed by our Low Price Guarantee. We're so confident they're the lowest online, we're willing to put money on it.

26                   **Hotel Low Price Guarantee Terms and Conditions:**

27                   If you book a qualifying prepaid hotel rate on the Orbitz Web site, and then find the same room, in the same hotel, for the same dates, at a lower price online, before  
28                   taxes and fees, we'll refund the difference and give you a \$50 discount on a future hotel booking.

1       62.     Absent the RPM scheme, the Online Retailer Defendants could not offer the best  
2 price guarantees *unless* they engaged in price competition and discounted the Rack Rates.

3       63.     The RPM Agreements, and the scheme in restraint of trade, have harmed  
4 competition in the relevant market(s) and caused prices to be higher in the relevant market(s) than  
5 the prices would have been without the Agreements.

6       64.     In addition, the uniform adoption and enforcement of “rate parity” and most  
7 favored nation clauses by the Online Retailer Defendants is a horizontal *per se* price fixing  
8 agreement.

9       65.     The Agreements were specifically intended to protect the Defendants from price  
10 competition - both from Hotel Defendants and other highly efficient retailers - offering the same  
11 inventory. Thus, Defendants agreed to restrain competition by mandating higher price levels and  
12 thereby neutering the competition or by eliminating the price cutting entirely. This scheme  
13 achieved its goals, and thereby substantially inflated prices to consumers like the Plaintiff.

14 **D.     Investigation by Governmental Authorities**

15       66.     This price-fixing conspiracy is evidently not confined to the United States. The  
16 British Office of Fair Trade (“OFT”) recently issued a “Statement of Objections” alleging that  
17 Expedia, Inc. infringed competition through the very same price fixing agreements with respect to  
18 British hotel rooms. The *Telegraph* reported that Expedia admitted that “it has engaged in cartel  
19 conduct on breach of the law,” and is “providing information on its rivals under a ‘leniency deal’”  
20 with the British authorities.

21       67.     The British revelations leave no room for doubt: the Online Retailer Defendants  
22 are entering into contracts with the same Hotel Defendants in this country and to the same anti-  
23 competitive effect. The Agreements are part of an anti-competitive scheme under which the  
24 Online Retailer Defendants leveraged their substantial market power and dominance to induce the  
25 Hotel Defendants into agreeing to do one or more of the following: (a) impose minimum resale  
26 price maintenance agreements on competing Online Retailers; (b) enforce the price maintenance  
27 agreements as to the Online Retailers; and/ or (c) cut off supply to price-cutting Online Retailers.  
28

68. In sum, the Hotel Defendants did *not* and are *not* simply or unilaterally:

- a. refraining from selling to uncongenial retailers;
  - b. suggesting resale prices that were widely followed;
  - c. sanctioning, terminating or refusing to sell to retailers who failed to maintain resale price;
  - d. announcing and enforcing policies of sanctioning, terminating or refusing sellers who failed to maintain a minimum resale price; or
  - e. sanctioning, terminating or refusing to sell to other retailers following, or in complaints by retailers such as the Online Retailer Defendants.

69. Rather, the Agreements represent a conscious commitment to a common scheme, designed to achieve an unlawful objective, between the Online Retailer Defendants, the Hotel Defendants (including Intercontinental), and other online retailers.

70. The Hotel Defendants did not act unilaterally or independently, or in their own economic interests, when:

- a. entering into the Defendant Retailer-Hotel Agreements;
  - b. seeking online retailers' acquiescence to, and compliance with, the terms of the Hotel- Online Retailer Agreements;
  - c. seeking to have retailers charge minimum resale prices; or
  - d. terminating or refusing to sell to online retailers for violating the Agreements. In fact, absent threatened penalties or sanctions by the Online Retailer Defendants, it would not be in the Hotel Defendants' economic interest to enter into, maintain, or enforce the Agreements.

## VI. MONOPOLY/MARKET POWER

71. The relevant product market in this case is direct online retail sales of Room Reservations.

72. The relevant geographic market in this case is the United States and/or the State of California.

73. By virtue of their power to control prices and exclude competition in the relevant

1 market(s), the Online Retailer Defendants at all relevant times possessed monopoly power in the  
2 relevant market(s). The Online Retailer Defendants and their subsidiaries hold over a 50 percent  
3 market share in the internet travel business market. Just Expedia and its subsidiaries alone  
4 account for approximately 50% of the internet travel business market. Moreover the Online  
5 Retailer Defendants possess a dominant share of the market(s) for online retail sales of Room  
6 Reservations.

7 **VII. MARKET EFFECTS OF AND ANTITRUST INJURY DUE  
8 TO DEFENDANTS' ANTICOMPETITIVE CONDUCT**

9 74. The overall effect of Defendants' anti-competitive, exclusionary scheme has been  
10 to substantially foreclose and impair competition (and the threat of such competition) from lower-  
11 priced Room Reservations. As alleged above, had the Defendants not improperly foreclosed or  
12 stifled actual or potential competitors from competing in the market for Room Reservations, other  
13 actual or potential rival retailers would have achieved much greater sales than they actually did  
14 (or threatened to do), given the lower prices that they charged (or could have charged upon entry),  
15 and would have posed a far greater competitive threat to the Defendants. Additionally, absent the  
16 Defendants' exclusionary conduct, barriers to entry to the market would have been lower, which:  
17 (a) would have made it easier for existing or new competitors to enter or expand their positions in  
18 the market for Room Reservations, and (b) would have caused existing or potential competitors to  
19 be attracted to the Room Reservation market because of the supracompetitive prices that the  
20 Defendants were charging. As a result, absent the Defendants' misconduct, the Defendants  
21 would have rationally perceived that there was a greater threat of potential competition in the  
22 relevant market if the Defendants did not reduce their supra-competitive prices.  
23

24 75. The presence of unfettered competition from actual or potential competitors, which  
25 were selling lower-priced Room Reservations, would have forced the Defendants to lower the  
26 prices for their Room Reservations in order to remain competitive and/or to counter a perceived  
27 threat of additional entry.  
28

76. During the relevant period, Plaintiff and the other members of the Class purchased  
Room Reservations directly from the Defendants. As a result of the Defendants' alleged illegal

1 conduct, members of the Class were compelled to pay, and did pay, artificially inflated prices for  
2 the Room Reservations they purchased. Plaintiff would have been able to, *inter alia*, purchase  
3 less-expensive Room Reservations had potential competitors been able to engage in unfettered  
4 competition. The prices that Plaintiff and the other Class members paid for Room Reservations  
5 during the Class Period were substantially greater than the prices that Plaintiff and the Class  
6 members would have paid absent the illegal conduct alleged herein because: (1) the prices of all  
7 Room Reservations were artificially inflated by the Defendants' illegal conduct; and (2) Class  
8 members were deprived of the opportunity to purchase Room Reservations from the Defendants'  
9 competitors at substantially lower prices. Thus, Plaintiff and the Class have, as a consequence,  
10 sustained substantial damages in the form of overcharges.

### 11                   **VIII. CLASS ALLEGATIONS**

12       77. Pursuant to Rule 23 of the Federal Rules Of Civil Procedure, Plaintiff brings this  
13 class action on behalf of himself and all members of the following class (the "Class"):

14       All persons and entities throughout the United States who paid for  
15 a room at a Defendant Hotel reserved through the Online Retailer  
16 Defendants. Expressly excluded are (i) room reservations made as  
17 part of a package deal; or (ii) room reservations made without  
disclosure of the name of the hotel until after paying for the room  
reservation.

18       78. Pursuant to Rule 23 of the Federal Rules Of Civil Procedure, Plaintiff bring this  
19 class action on behalf of himself and all members of the following subclass (the "California  
20 Class"):

21       All persons and entities throughout the State of California who  
22 paid for a room at a Defendant Hotel reserved through the Online  
23 Retailer Defendants. Expressly excluded are (i) room reservations  
made as part of a package deal; or (ii) room reservations made  
without disclosure of the name of the hotel until after paying for  
the room reservation.

24       79. Plaintiff believes that the Class and California Class include thousands of  
25 consumers and businesses across the United States, though the exact number and the identities of  
26 the Class members are currently unknown.

27       80. The members of the Class and California Class are so numerous that joinder of all  
28 Class members is impracticable.

1        81. Common questions of law and fact exist as to all members of the Class and  
2 California Class and predominate over any questions affecting solely individual members of the  
3 Class and California Class. Nearly all factual, legal, and statutory relief issues raised in this  
4 Complaint are common to each of the members of the Class and California Class and will apply  
5 uniformly to every member of the Class and California Class. Among the questions of law and  
6 fact common to Class and California Class members are:

- 7              a. whether Defendants engaged in agreements, contracts, combinations, and  
8 conspiracies, which had the purpose and/or effect of unreasonably restraining competition and  
9 limiting purchaser access to competing and lower-priced Room Reservations;
- 10             b. whether Defendants unreasonably restrained trade;
- 11             c. whether Defendants' anti-competitive contracts, combinations, and  
12 conspiracies have caused Plaintiff and the other members of the Class and California Class to  
13 suffer antitrust injury in the nature of overcharges;
- 14             d. whether Defendants' unlawful conduct caused Plaintiff and other Class and  
15 California Class members to pay more for the Room Reservations than they otherwise would  
16 have paid;
- 17             e. the appropriate Class-wide measure of damages;
- 18             f. whether, and in what amount, Plaintiff and the other Class and California  
19 Class members are entitled to recover treble damages, court costs, and attorneys' fees;
- 20             g. whether Defendants' anti-competitive conduct is continuing, thus entitling  
21 the Class and California Class to injunctive relief to promote unrestrained trade and free and fair  
22 competition.

23        82. Plaintiff's claims are typical of the claims of other members of the Class and  
24 California Class because Plaintiff and every member of the Class and California Class have  
25 suffered similar injuries as a result of the same practices alleged herein. Plaintiff has no interest  
26 adverse to the interests of the other members of the Class and California Class.

27        83. Plaintiff will fairly and adequately represent and protect the interests of the Class  
28 and California Class. Plaintiff has retained able counsel with extensive experience in class action

litigation. The interests of the Plaintiff are coincident with, and not antagonistic to, the interests of the other Class and California Class members.

3        84. The questions of law and fact common to the members of the Class predominate  
4 over any questions affecting only individual members, including legal and factual issues relating  
5 to liability and damages.

6       85. Plaintiff and other members of the Class have suffered damages as a result of  
7 Defendants' unlawful and wrongful conduct. Absent a class action, Defendants will retain  
8 substantial funds received as a result of their wrongdoing, and such unlawful and improper  
9 conduct shall, in large measure, go unremedied. Absent a class action, the members of the Class  
10 will not be able to effectively litigate these claims and will suffer further losses, as Defendants  
11 will be allowed to continue such conduct with impunity and retain the proceeds of its ill-gotten  
12 gains.

13        86. A class action is superior to other available methods for the fair and efficient  
14 adjudication of this controversy because joinder of all Class members is impracticable.  
15 Moreover, because the damages suffered by individual members of the Class are relatively small,  
16 the expense and burden of individual litigation make it impossible for members of the Class to  
17 individually redress the wrongs done to them. The Class is readily definable, and prosecution of  
18 this action as a class action will eliminate the possibility of repetitious litigation. There will be no  
19 difficulty in the management of this action as a class action.

## **IX. TOLLING OF THE STATUTE OF LIMITATIONS, FRAUDULENT CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS**

21           87. Plaintiff repeats and realleges each of the foregoing allegations as if fully set forth  
22 herein

23       88. Plaintiff did not discover and could not have discovered through the exercise of  
24 reasonable diligence the existence of the claims sued upon herein until immediately prior to  
25 commencing this civil action.

26           89. Any applicable statutes of limitation have been tolled by Defendants' affirmative  
27 acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above

reveal.

90. Because of the self concealing nature of Defendants' actions and their affirmative acts of concealment, Plaintiff and the Class assert the tolling of any applicable statutes of limitations affecting the claims raised herein.

5        91. Defendants continue to engage in the deceptive practice, and consequently,  
6        unwary consumers are injured on a daily basis by Defendants' unlawful conduct. Therefore,  
7        Plaintiff and the Class submit that each instance that Defendants engaged in the conduct  
8        complained of herein and each instance that a member of the Class purchased a Room  
9        Reservation constitutes part of a continuing violation and operates to toll the statutes of limitation  
10      in this action.

92. Defendants are estopped from relying on any statute of limitations defense because  
of their unfair or deceptive conduct.

13        93. Defendants' conduct was and is, by its nature, self-concealing. Still, Defendants,  
14 through a series of affirmative acts or omissions, suppressed the dissemination of truthful  
15 information regarding their illegal conduct, and have actively foreclosed Plaintiff and the Class  
16 from learning of their illegal, anti-competitive, unfair and/or deceptive acts.

17        94. By reason of the foregoing, the claims of Plaintiff and the Class are timely under  
18 any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling doctrine,  
19 and fraudulent concealment.

X. COUNTS

## COUNT I

**(AGREEMENTS UNREASONABLY RESTRAINING TRADE)**  
**Violation Of 15 U.S.C. § 1TC \l "1"**

24       95. Plaintiff hereby incorporates each preceding and succeeding paragraph as though  
25 fully set forth herein.

26        96. The Agreements, and their enforcement, constitute contracts, combinations and  
27 conspiracies that substantially, unreasonably, and unduly restrain trade in the relevant market(s),  
28 and harmed Plaintiff and the Class thereby.

97. The Agreements cover a sufficiently substantial percentage of relevant market(s) to harm competition.

98. The Defendants are liable for the creation, maintenance, and enforcement of the Agreements under a *per se*, “quick look” and/or rule of reason standard.

99. The Defendants possess market power.

100. The Agreements harm competition by artificially raising and stabilizing prices.

101. There is no legitimate, pro-competitive business justification for the Agreements or any of them that outweighs their harmful effect. Even if there were some conceivable justification, the Agreements are broader than necessary to achieve such a purpose.

102. Plaintiff and members of the Class were injured in their business or property by the collusion and conspiracy alleged above which facilitated, enabled, assisted or furthered Defendants' substantial foreclosure and exclusion of competition in the relevant market(s).

103. Without limiting the generality of the foregoing, Plaintiff and the other members of the Class have been forced to pay higher prices for Room Reservations than they would have paid in the absence of Defendants' unlawful conduct.

## COUNT II

**VIOLATION OF THE CARTWRIGHT ACT**  
**(California Business & Professions Code Sections 16720, *et seq.*)**  
**(CALIFORNIA CLASS ONLY)**

104. Plaintiff hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

105. Defendants engaged in price-fixing and a *per se* violation of the Cartwright Act.

### COUNT III

**VIOLATION OF FALSE ADVERTISING LAWS  
(Violations of Cal. Bus. & Prof. Code § 17500 *et seq.*)  
(CALIFORNIA CLASS ONLY)**

115. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs set forth above. This count is asserted against the online retailer defendants.

116. Defendants' use of various forms of advertising media to advertise, call attention to or give publicity to the sale of their goods and services, and other practices, as set forth above.

1 which are not as advertised or as otherwise represented, constitutes unfair competition, unfair,  
2 deceptive, untrue or misleading advertising, under Business & Professions Code Section 17500 *et*  
3 *seq.* These advertisements and practices have deceived, and are likely to deceive, the consuming  
4 public, in violation of those sections.

5 117. Defendants' business acts and practices, as alleged herein, have caused injury to  
6 the Plaintiff who would not have paid as much for online rooms had he known the truth.

7 118. Plaintiff and the Class are entitled to restitution and/or other equitable relief in  
8 light of the practices described herein.

9 119. Defendants' practices in connection with the marketing and sale of online rooms  
10 violate the CLRA in at least the following respects:

- 11 a. In violation of Section 1770(a)(5), Defendants knowingly misrepresented the  
12 character, uses and benefits of the rooms;
- 13 b. In violation of Section 1770(a)(9), Defendants have knowingly advertised the  
14 online rooms with the intent not to sell there as advertised; and
- 15 c. In violation of Section 1770(14), Defendants knowingly misrepresented the legal  
16 rights, obligations, or remedies involved in the purchase and sale of online rooms.

17 120. Defendants' misrepresentations, failure to disclose, and knowing concealment of  
18 the prices for online rooms are misrepresentations, omissions, and concealments of material fact  
19 that constitute unfair and/or deceptive business practices in violation of Civil Code Section  
20 1770(a) and caused harm to Plaintiff and Class members who would not have purchased and/or  
21 paid as much for their rooms had they known the truth.

22 121. In accordance with Civil Code § 1780 (a), Plaintiff and members of the Class seek  
23 injunctive and equitable relief for violations of the CLRA. In addition, after mailing appropriate  
24 notice and demand in accordance with Civil Code § 1782(a) & (d), Plaintiff will subsequently  
25 amend this Class Action Complaint to also include a request for damages. Plaintiff and members  
26 of the class request that this Court enter such orders or judgments as may be necessary to restore  
27 to any person in interest any money which may have been acquired by means of such unfair  
28 business practices, and for such other relief, including attorneys' fees and costs, as provided in

1 Civil Code § 1780 and the Prayer for Relief.

2 **COUNT IV**

3 **VIOLATION OF UNFAIR COMPETITION LAWS**  
4 **(Violations of Cal. Bus. & Prof. Code § 17200 *et. Seq.*)**

5 122. Plaintiff incorporates and realleges, as though fully set forth herein, each of the  
6 paragraphs set forth above.

7 123. This Count is asserted against the Online Retailer Defendants on behalf of the  
8 California subclass.

9 124. Defendants have engaged in unfair competition within the meaning of California  
10 Business & Professions Code Section 17200 *et seq.* because Defendants' conduct is unlawful,  
11 misleading, and unfair as herein alleged.

12 125. Defendants' business practices are unlawful because they violate the CLRA, as  
13 well as other statutes alleged herein.

14 126. The practices are misleading because they were likely to deceive consumers into  
15 believing that they are obtaining the "best price" or a "low price" for their hotel room.

16 127. Defendants' business practices, and each of them, are unfair because they offend  
17 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or  
18 substantially injurious to consumers, which harm greatly outweighs any benefit associated with  
19 the business practice, in that consumers are led to believe that the rooms they were paying for had  
20 qualities that it did not.

21 128. Plaintiff has standing to pursue this claim because he has been injured by  
22 virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged  
23 herein. Plaintiff would not have purchased his hotel room or paid as much for it had he known  
24 the truth.

25 129. Plaintiff and the Class are entitled to relief, including full restitution and/or  
26 restitutionary disgorgement, to the greatest extent permitted by law, which may have been  
27 obtained by Defendants as a result of such business acts or practices, and enjoining Defendants to  
28 cease and desist from engaging in the practices described herein.

## **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, on his behalf and on behalf of the Class, prays for judgment, as follows:

- A. For an Order certifying this case as a class action against Defendants and appointing Plaintiff as Representative of the Class;
  - B. For money damages against Defendants and in favor of Plaintiff and the Class on all claims asserted in this Complaint;
  - C. For costs of suit incurred herein;
  - D. For prejudgment interest to the extent allowed by law;
  - E. For penalties as allowed by law;
  - F. For permanent injunctive relief to enjoin further violations of the law; and
  - G. For such other and further relief as this Court may deem just and proper.

## JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues triable of right by jury.

Dated: October 9, 2012

David E. Bower (SBN 119546)  
FARUQI & FARUQI, LLP  
10866 Wilshire Boulevard, Suite 1470  
Los Angeles, CA 90024  
Tel: (424) 256-2884  
Fax: (424) 256-2885  
[dbower@faruqilaw.com](mailto:dbower@faruqilaw.com)

Joseph T. Lukens  
Richard D. Schwartz  
FARUQI & FARUQI, LLP  
101 Greenwood Avenue Suite 600  
Jenkintown, PA 19046  
Tel: (215) 577-5770  
Fax: (215) 577-5771  
[jlukens@faruqilaw.com](mailto:jlukens@faruqilaw.com)  
[rschwartz@faruqilaw.com](mailto:rschwartz@faruqilaw.com)